

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISMAT TAWFIQ SABHA) Case No.
c/o Sahara Suits, Tia'Al-Ali District)
16 Ghazi Arabeiat Street, Amman, Jordan)
CIS File No. A23-048-079,)

LEE AVALON ANTONIO JOSE,)
23HI Eastwood Excelsior Condominium)
Eastwood City, Bagumbayan)
Quezon City, Philippines)
CIS File No. A76-185-665,)

Plaintiffs,)

v.)

MICHAEL CHERTOFF, Secretary,)
U.S. Department of Homeland Security)
245 Murray Lane, S.W., Building 410)
Washington, DC 20528,)

HUGO TUEFEL III,)
Chief FOIA Officer, The Privacy Office)
U.S. Department of Homeland Security)
245 Murray Drive, S.W., Building 410)
Washington, DC 20528-0550,)

EMILIO T. GONZALEZ, Director,)
U.S. Citizenship and Immigration Services)
20 Massachusetts Avenue, N.W.)
Washington, DC 20529)

T. DIANE CEJKA, Director,)
National Records Center, U.S. Citizenship And)
Immigration Services, P. O. Box 648010,)
Lee's Summit, MO 64064-8010, AND)

BRIAN J. WELSH, FOIA Officer,)
National Records Center)
U.S. Citizenship and Immigration Services)
FOIA/PA Office, P. O. Box 648010)
Lee's Summit, MO 64064-8010)

Defendants.)

**COMPLAINT FOR INJUNCTIVE RELIEF UNDER THE FREEDOM OF
INFORMATION ACT AND THE PRIVACY ACT, 5 U.S.C. §§ 552 AND 552A**

Plaintiffs Ismat Tawfiq Sabha and Lee Avalon Antonio Jose, by counsel, complain of the Defendants, Michael Chertoff, Secretary, U.S. Department of Homeland Security; Hugo Tuefel III, Chief FOIA Officer, U.S. Department of Homeland Security; Emilio T. Gonzalez, Director, U.S. Citizenship and Immigration Services; T. Diane Cejka, Director, National Records Center, U.S. Citizenship and Immigration Services; and Brian J. Welsh, FOIA Officer, FOIA / PA Office, National Records Center, U.S. Citizenship and Immigration Services, as follows:

I.

INTRODUCTION

1. Plaintiff Ismat Tawfiq Sabha and Lee Avalon Antonio Jose bring the instant action for injunctive relief under the Freedom of Information Act (hereinafter "FOIA") and the Privacy Act, pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552a(g)(1)(B), to compel the Defendants' response to their requests for information and documents in files and information systems maintained by the United States Department of Homeland Security (hereinafter "DHS"). Mr. Sabha and Mr. Jose also bring the instant action for attorneys' costs, fees, and expenses under 5 U.S.C. §§ 552(a)(4)(E) and 552a(g)(3)(B), and the Equal Access to Justice Act (EAJA), 28 U.S.C. §§ 2412(a)(1) and 2412(b).

2. FOIA requires that federal agencies, "upon any request for records which (i) reasonably describes such records and (ii) is in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person," unless the agency establishes that the requested information falls into one of seven, narrowly-defined statutory exemptions. 5 U.S.C. § 552(a)(3)(A); see also Summers v. Department of Justice, 140 F.3d 1077, 1080 (D.C. Cir. 1998) (specifying that a federal agency bears the burden of proving that requested information under FOIA falls into one of FOIA's

13. Mr. Sabha and Mr. Jose also ask that this Court enter an Order compelling the Defendants to immediately produce any non-exempt agency records and documents improperly withheld from them in DHS files, databases, and information systems.

II.

JURISDICTION AND VENUE

14. This Court has original jurisdiction over the instant case under 28 U.S.C. § 1331, because the Plaintiffs raise federal questions arising under the United States Constitution and the laws of the United States. This case involves the Defendants' non-compliance with statutory requirements and deadlines for the disclosure of federal agency records and information under FOIA, 5 U.S.C. § 552(a)(3)(A), and the Privacy Act, 5 U.S.C. § 552a(d)(1). See 5 U.S.C. § 552(a)(4)(B) (declaring that "[o]n complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant," pursuant to FOIA); 5 U.S.C. § 552a(g)(1)(B) (conferring upon "the district courts of the United States" jurisdiction over all claims that federal agencies failed to disclose information in their files pertaining to individuals upon request, under the Privacy Act).

15. Venue lies in the United States District Court for the District of Columbia, pursuant to 28 U.S.C. § 1391(e)(1), because the Defendants Michael Chertoff, Hugo Tuefel III, and Emilio T. Gonzalez all reside in Washington, D.C., and because those defendants are being sued in their official capacities. See Nestor v. Hersey, 425 F.2d 504, 521 (D.C. Cir. 1969) (noting that federal officials "reside" in the District of Columbia, for purposes of venue under 28 U.S.C. § 1391(e)); see also Abusadeh v. Chertoff, No. 06-2014 (CKK), 2007 U.S. Dist. LEXIS 52549 (D.D.C. July 23, 2007) (finding that venue properly lies in the District of Columbia, under 28 U.S.C. § 1391(e), because three of the four named defendants, DHS, United States

Citizenship and Immigration Services, and the Federal Bureau of Investigation, "reside" in the District of Columbia).

III.

PARTIES

A. Plaintiffs.

16. Plaintiff Ismat Tawfiq Sabha is a national and citizen of Jordan. He was born in Jordan on [REDACTED], 1955. His alien registration number, or "A" number, is A23-048-079. He was last admitted into the United States in May of 2003, through Los Angeles, California. He currently resides in Jordan.

17. Plaintiff Lee Avalon Antonio Jose is a national and citizen of the Philippines. He was born in Manila, Philippines on [REDACTED], 1982. His alien registration number, or "A" number, is A76-185-665. He was last admitted into the United States on September 30, 1998. He currently resides in the Philippines.

18. On or about December 15, 2005 and August 22, 2006, Mr. Sabha and Mr. Jose filed Form G-639 Freedom of Information/Privacy Act requests with the Defendants, which asked for disclosure of information and documents in Mr. Sabha and Mr. Jose's immigration files, or "A" files, and in DHS databases and information systems.

B. Defendants.

19. Defendant Michael Chertoff is the Secretary of the United States Department of Homeland Security. He has a mandate, pursuant to 6 U.S.C. § 111(b)(1)(D) and 8 U.S.C. § 1103(a), to administer and enforce the Immigration and Nationality Act, and other laws pertaining to the immigration and naturalization of aliens. He controls, directs and supervises all employees, files, and records of DHS, under 8 U.S.C. § 1103(a)(2). He has the authority to promulgate regulations necessary for carrying out his statutory authority, and to delegate his

VII.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that this Court enter the following Orders:

1. That this Court enter an Order enjoining the Defendants from withholding information pertaining to Mr. Sabha and Mr. Jose in DHS files, databases, and information systems, pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552a(g)(3)(A), and federal regulations;

2. That this Court enter an Order compelling the immediate production of any and all non-exempt information and documents in DHS files, databases, and information systems, pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552a(g)(3)(A), and federal regulations;


3. That Mr. Sabha and Mr. Jose be awarded attorneys' fees, costs, and expenses, in conformity with 5 U.S.C. §§ 552(a)(4)(E) and 552a(g)(3)(B) and the Equal Access to Justice Act (EAJA), 28 U.S.C. §§ 2412(a)(1) and 2412(b); and

4. That this Court issue Orders granting any other relief that it deems just, equitable, and proper.

Respectfully submitted this 17th day of September, 2007

ISMAT TAWFIQ SABHA AND LEE AVALON ANTONIO JOSE

By counsel,


THOMAS K. RAGLAND
DC Bar No. 50102

MAGGIO & KATTAR, P.C.
11 Dupont Circle, N.W., Suite 775
Washington, D.C. 20036
Phone: (202) 483-0053
Fax: (202) 483-6801

Attorneys for Plaintiffs Ismat Tawfiq Sabha and Lee Avalon Antonio Jose

VERIFICATION

I, LEE AVALON ANTONIO JOSE, under penalty of perjury, state the following:

I affirm the truth of the factual contents of the foregoing COMPLAINT FOR
INJUNCTIVE RELIEF UNDER THE FREEDOM OF INFORMATION ACT AND
THE PRIVACY ACT, 5 U.S.C. §§ 552 AND 552A, upon information and belief.

Dated: 9/1/07

Place: Manila, Philippines



LEE AVALON ANTONIO JOSE

VERIFICATION

I, ISMAT TAWFIQ SABHA, under penalty of perjury, state the following:

I affirm the truth of the factual contents of the foregoing COMPLAINT FOR
INJUNCTIVE RELIEF UNDER THE FREEDOM OF INFORMATION ACT AND
THE PRIVACY ACT, 5 U.S.C. §§ 552 AND 552A, upon information and belief.

Dated: August 16 2007

Place: Amman - Jordan


ISMAT TAWFIQ SABHA